Weslock, Division of Tool Research & Engineering Corporation *and* Chauffeurs, Salesdrivers & Helpers Local 572, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Petitioner. Case 21–RC–12589

October 6, 1972

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN MILLER AND MEMBERS JENKINS AND KENNEDY

Pursuant to a Stipulation for Certification Upon Consent Election, an election by secret ballot was conducted on April 7, 1972, under the direction and supervision of the Regional Director for Region 21 among the employees in the appropriate unit. At the conclusion of the election, the parties were furnished a tally of ballots which showed that there were approximately 550 eligible voters and 543 cast valid ballots, of which 314 were for Petitioner, 228 were against representation, and 1 ballot was challenged, The challenged ballot did not affect the results of the election. Thereafter, the Employer filed objections to conduct affecting the results of the election.

In accordance with the National Labor Relations Board Rules and Regulations, the Acting Regional Director conducted an investigation and on May 24, 1972, issued and duly served on the parties his report on objections, in which he recommended that the objections be overruled in their entirety and that the Petitioner be certified as the exclusive bargaining representative of the employees involved. Thereafter, the Employer duly filed exceptions to the Acting Regional Director's report.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The Petitioner is a labor organization claiming to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

4. The parties stipulated, and we find, that the following employees constitute a unit appropriate for collective bargaining within the meaning of the Act:

All production and maintenance employees, shipping and receiving employees, warehousemen, truck drivers and leadmen employed by the Employer at its facilities located at 13344 South Main Street, Los Angeles, California and at 2055 Randolph Street, Huntington Park, California; excluding all other employees, office clerical employees, prefessional employees, guards and supervisors as defined in the Act.

5. The Board has considered the Acting Regional Director's report and the Employer's exceptions thereto and finds merit in the Employer's exceptions to the recommendation to overrule Objection 1.[1]

This objection concerns an item in the special Weslock edition of Petitioner's official newspaper which it distributed to a substantial number of the employees on the day of the election. The Employer contends that the newspaper contained material misrepresentations which it did not have an adequate opportunity to rebut that affected the results of the election. We agree.

John Bradford was hired as a forklift operator in February 1972. After about 4 weeks on the job his left knee began to hurt, especially when depressing the brake of the forklift. He never had knee problems previously. A preemployment physical report was silent on this matter. Bradford informed his immediate supervisor of his pain and told him that operating the forklift aggravated the tendon or knee. There is no evidence that Bradford at any time stated he had been injured on the job. Bradford requested a transfer to a job in which he would not be required to walk or stand for any period of time, "because of a weak muscle or tendon in his knee." When Personnel Director Flecky asked Bradford if he had been injured while employed at Weslock, Bradford stated, "No, I don't remember getting hurt at Weslock." Bradford was further limited in his availability for other jobs because of allergies, primarily his need to avoid contact with heavy dust. The Employer earnestly attempted to find a suitable alternate position for Bradford but found none available, and on March 13 it advised Bradford that unless such a position opened up before March 17 his employment would be terminated. Consequently, Bradford was terminated March 17 because, according to the Employer's records, he was "not able to operate forklift due to pain in knee." His termination was denominated a "Medical Termination."

Thereafter, on election day, April 7, the Petitioner distributed at both employment locations the special Weslock edition of its newspaper printed in both Spanish and English. Prominent on page 1 of the newspaper was a picture of various officials of Peti-

[1] In view of our decision herein, we need not pass upon the Employer's remaining exceptions to the Regional Director's recommendation that Objection 2 be overruled.

tioner seated with Bradford. The caption identified Petioner's officials and stated that:

> WESLOCK employee John "Deacon" Bradford . . . was arbitrarily fired after straining his tendon on a new piece of equipment. Although he asked for another job, management saw fit to terminate him for getting hurt at work. Teamsters Local 572 Secretary Jack Cox . . . immediately filed unfair charges with the National Labor Relations Board and provided an industrial accident attorney to represent John and secure the full medical benefits to which he is entitled under state law. . . .

The Employer first learned of the newspaper about 3 p.m. on the day of the election. The polls closed at 4:30 p.m.; no reply to this article was made by the Employer then.

We find several misrepresentations in the above-quoted newspaper caption. Contrary to the statements therein, Bradford was not hurt on a new piece of equipment. He operated an ordinary forklift. By Bradford's admission to the Employer, he was not hurt on the job. The Employer did not arbitrarily refuse his transfer request but rather made an effort to find a position compatible with Bradford's physical limitations, and only upon failing to do so did the Employer terminate Bradford. In these circumstances, it was misleading to characterize his termination as arbitrary.[2]

The Acting Regional Director, however, found that these misrepresentations were not material because the Petitioner's characterization of Bradford's termination as "arbitrary" is typical of election propaganda, and "arbitrary" is defined in several ways not always connoting "unfairness." Also, the Acting Regional Director noted that the Union's representation that Bradford was fired for a job-connected injury is not without some basis in view of the Employer's termination record describing Bradford's release as a medical termination because he was unable to "operate forklift due to pain in knee." The Acting Regional Director also found that while Bradford clearly was not injured on "a new piece of equipment," nevertheless that misrepresentation was not material. He concluded that the article, taken as a whole, was recognizable by the employees as typical union campaign rhetoric describing the Employer as insensitive to the needs of employees for job security while stressing that the well-being of employees could be attained only through the Union.

We find, contrary to the Acting Regional Director, that these misrepresentations were substantial departures from the truth made at a time when the Employer had no effective opportunity to reply and thus may reasonably be expected to have had a significant impact on the election.[3] In our view, the newspaper statements concerning Bradford falsely characterize the Employer as one who subjected an employee to the hazards of a new and unfamiliar machine and then, when the employee was injured, callously discharged him. It is reasonable to believe, and we find, that this characterization, which was conveyed in a context designed to convince the employees that the Petitioner was in possession of the facts of the matter, and which concerned the important matter of job security, must have had a significant impact on the employees causing them to adhere to Petitioner for protection.[4]

We conclude that Employer's Objection 1 has merit and that the Petitioner has by its conduct interfered with the employees' free choice in the election. Therefore, we shall set aside the election of April 7, 1972, and direct that a second election be conducted.

ORDER

It is hereby ordered that the election conducted herein on April 7, 1972, be, and it hereby is, set aside. [Direction of Second Election and *Excelsior* footnote omitted from publication.]

[2] We are administratively advised that on May 15, 1972, Petitioner withdrew its unfair labor practice charges with respect to Bradford in Case 21–CA–10806.

[3] *Hollywood Ceramics Company, Inc*, 140 NLRB 221, 224.

[4] *Alco Standard Corporation*, 180 NLRB 412